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No. 93-5

IN THE

Supreme Court Of The United States

October Term, 1993

JOHNNY H. WATERS, *et al.*,
Petitioners

v.

STATE OF ALABAMA, *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The only question presented in the appeal to the Eleventh Circuit Court of Appeals was whether the Judge of the United States District Court for the Middle District of Alabama, Southern Division, ruled correctly in dismissing plaintiff's claims under 42 U.S.C.S. § 1983 (1986) with prejudice, on the basis that all claims under 42 U.S.C.S. § 1983 (1986) were barred by the statute of limitations.

The five questions set out in the petition filed in this Court were not and never have been issues on appeal to the Eleventh Circuit Court of Appeals. No factual evidence was received or considered in the ruling and the allegations of medical malpractice by either Dr. Hipp or Dr. Vives-Austin are mere delusions. No constitutional issues were raised or considered.

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JURISDICTION

The Petition for Rehearing in the Eleventh Circuit was denied on March 12, 1993. This Petition for Writ of Certiorari could only be timely as to the judgment in the Eleventh Circuit. Petitioner seeks to invoke jurisdiction as to a judgment of the Supreme Court of Alabama entered on December 13, 1991. Obviously the petition is not timely filed as to the state court decision.

STATEMENT OF THE CASE

The recitation of facts presented by petitioners is inaccurate and unacceptable as to Dr. Steven Hipp and Dr. Peggy Vives-Austin.

The case filed in the United States District Court for the Middle District of Alabama, Southern Division, was filed on January 14, 1992. All events alleged in the cause of action occurred prior to April 2, 1989. The judge of the District Court issued an order on March 11, 1992, granting defendants' motions to dismiss and dismissing plaintiffs' claim under 42 U.S.C.S. § 1983 (1986), with prejudice. The remainder of plaintiffs' complaint was dismissed without prejudice for lack of subject matter jurisdiction.

The only 42 U.S.C.S. § 1983 (1986) charge against these respondents in the complaint filed in U.S. District Court was contained in Count I which alleged that these defendants violated the right of Jeanne Carol Waters to live "by pulling, without authorization, the life support systems of Jeanne Carol Waters" on April 2, 1989, thereby causing her death on this date. With the complaint not being filed until January 14, 1992, it was apparent on the face of the complaint that the applicable two year statute of limitations had expired long before suit was filed.

SUMMARY OF THE ARGUMENT

Petitioners complained that on April 2, 1989, respondents, Dr. Steven Hipp and Dr. Peggy Vives-Austin, violated the civil rights of Jeanne Carol Waters to live. Suit for the alleged wrong was not filed until January 14, 1992. The Eleventh Circuit Court of Appeals upheld the decision of the district judge that the two year statute of limitations period of Ala. Code § 6-2-38*(l)* (Supp. 1992), applies to all actions under 42 U.S.C.S. § 1983 (1986). Thus, it appears on the face of the complaint that the cause of action against these respondents was barred by the statute of limitations.

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Respondents.

Brief in Opposition to Petition for Writ of Certiorari

Respondents, Dr. Steven Hipp and Dr. Peggy Vives-Austin, respectfully submit this brief in opposition to the Petition for Writ of Certiorari filed by petitioners, Johnny H. Waters, et al.

REASONS FOR DENYING THE PETITION

1. The District Court's decision that the two year statute of limitations period of Ala. Code § 6-2-38*(l)* (Supp. 1992), applies to actions under 42 U.S.C.S. § 1983 (1986), was correct and the action was due to be dismissed. *Jones v. Preuit & Mauldin*, 876 F.2d 1480 (11th Cir. 1989).

2. The Eleventh Circuit's decision affirming this action of the District Court was correct. *Owens v. Okure*, 488 U.S. 235 (1989); *Jones v. Preuit & Mauldin*, supra.

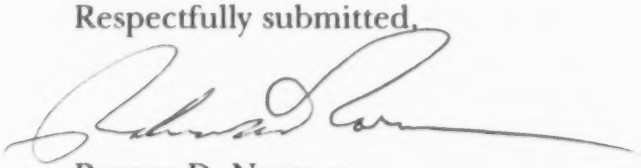
3. Petitioners continue to cite the case of *Beard v. Stephens*, 372 F.2d 685 (5th Cir. 1967), as a *1987* decision. Actually, this was a *1967* decision. Petitioners have had this error pointed out in the Eleventh Circuit but continue to erroneously argue that *Beard v. Stephens* is in conflict with *Owens v. Okure, Jones v. Preuit & Mauldin*, and Ala. Code § 6-2-38*(l)* (Supp. 1992).

4. Under Rule 10, Rules of the Supreme Court, there is no special or important reason set out for granting this petition for a writ of certiorari, such as a conflict with decisions of another court, and there is no question of federal law that has not been settled by this Court.

CONCLUSION

These respondents respectfully submit that the petition for writ of certiorari should be denied.

Respectfully submitted,



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